

## Rule 26, Ariz. R. Crim. P. – Sentencing

**RESTITUTION: Restitution is limited to economic losses directly resulting from an offense for which defendant has been convicted.....Revised 3/2010**

Restitution is only payable to victims who suffer economic loss *directly resulting* from an offense on which the defendant has been *convicted* – either by trial or through a guilty plea -- unless the defendant has agreed to pay restitution to other victims. “It is well settled that a defendant may be ordered to pay restitution to victims under A.R.S. § 13-603(C) only for charges that he or she has admitted, of which he or she has been found guilty, or for which he or she has agreed to pay restitution.” *State v. Proctor*, 196 Ariz. 557, 565 ¶ 29, 2 P.3d 647, 655 (App. 2000), *citing State v. French*, 166 Ariz. 247, 801 P.2d 482 (App. 1990). A defendant who has been found “guilty except insane” is not considered to have a “conviction” for purposes of restitution, and the trial court may not order such a defendant to pay restitution. *State v. Heartfield*, 196 Ariz. 407, 408-09, ¶¶ 6-8, 998 P.2d 1080, 1081-82 (App. 2000).

A trial court must award restitution to victims of a criminal offense when and to the extent that the defendant’s criminal act *directly causes* the victim’s economic loss. In *State v. Wilkinson*, 202 Ariz. 27, 39 P.3d 1131 (2002), Porter falsely held himself out to be a licensed contractor. He contracted with two victims who paid him thousands of dollars, but he left the work unfinished and most of the work he did do was faulty. He was convicted in Phoenix Municipal Court of two counts of contracting without a license, each a class one misdemeanor. The trial judge then held a restitution hearing and ordered Porter

to pay restitution to both victims in the amount they had paid to Porter, plus the estimated cost of repairing and completing the faulty work.

Porter appealed to the Superior Court. Judge Wilkinson vacated the restitution order, finding that the victims' economic losses were caused, not by his failure to have a license, but by his shoddy and incomplete work. The State filed a petition for special action and the Court of Appeals accepted jurisdiction but denied relief.

The Arizona Supreme Court discussed Arizona's restitution scheme in detail. The Court concluded that Arizona defines losses for which restitution may be awarded as: (1) *economic* loss (2) that would not have been incurred *but for* the defendant's criminal offense and (3) that was *directly caused* by the defendant's criminal conduct. See *id.* at 29, 39 P.3d at 1131. "If the loss results from the concurrence of some causal event other than the defendant's criminal conduct, the loss is indirect and consequential and cannot qualify for restitution under Arizona's statutes." *Id.*

The Arizona Supreme Court found that part of the trial court's restitution order could stand. "As a direct result of Porter's offer to act as a licensed contractor, [the victims] agreed to pay, and did pay" Porter amounts due under the contracts. *Id.* "Porter's criminal actions directly caused those losses," *Id.*, so the victims were entitled to recover restitution in the amount they had paid to Porter. But the expenses the victims incurred because of Porter's incomplete or faulty work were not proper for restitution -- they were indirect losses that "would

not have occurred without the concurrence of a second causal event, Porter's unworkmanlike performance." *Id.*

The Court rejected the argument that the victims could not recover because their damages were "not an element of the crime of which [Porter] was convicted." *Id.* at 30, 39 P.3d at 1134. The Court stated, "the conduct causing damage need not be an element of the crime for which the defendant is convicted to make the loss restitution-eligible. The test is whether particular criminal conduct directly causes the victim's loss." *Id.*

The Court also rejected the State's argument that Porter's conduct directly caused the victims' harm because they could not recover from the contractors' compensation fund established by statute to compensate persons injured by residential contractors, saying, "The State's argument confuses damage causation with access to a particular source of recovery." *Id.* The victims suffered two kinds of losses – direct loss of the money they paid to Porter, and indirect loss caused by Porter's shoddy work. Only the direct loss was a proper subject of restitution:

The necessary direct causal relationship between the criminal conduct and the claimed losses must remain the focus of the restitution statutes. The fact that the victims have no recourse to the statutory recovery fund affects not their economic loss, but rather the sources from which they can seek payment of losses caused by a factor other than Porter's criminal conduct.

*Id.* at 30-31, 39 P.3d at 1134-35.

Under the "but for" test in A.R.S. § 13-105(14) for determining whether losses fall within the definition of "economic loss," the loss must be directly connected to the specific offense on which the defendant has been found guilty

(unless the defendant has agreed to pay restitution for other losses). In *State ex rel. McDougall v. Superior Court*, 186 Ariz. 218, 920 P.2d 784 (App. 1996), Martinez caused a traffic accident resulting in property damage and personal injury. He left the scene of the accident and later pleaded guilty to leaving the scene of an injury accident. The victim's insurer sought restitution from Martinez for the damages paid to the victim. Citing *State v. Skiles*, 146 Ariz. 153, 704 P.2d 283 (App. 1985), the Court of Appeals held that Martinez was not liable for restitution. The Court reasoned that even though Martinez had caused the accident, he only pleaded guilty to leaving the scene, and none of the damage or injury was related to Martinez's criminal conduct of having left the scene of the accident, as opposed to his causing the accident.

The amount of restitution a victim receives should be reduced by any value conferred on the victim by the defendant. *Gilbert Prosecutor's Office v. Downie ex rel. County of Maricopa*, 218 Ariz. 466, 469, 189 P.3d 393, 396 (2008). In *Gilbert Prosecutor's Office*, defendant was convicted, like in *Wilkinson*, for contracting without a license. The municipal court ordered defendant to pay restitution to the victims for the full amount of payments made to defendant. The Arizona Supreme Court, however, held that restitution may be reduced by the value of the benefit conferred on the homeowner by the unlicensed contractor for the work he did on the victim's home.